

SAYRE & LEVITT, LLP

Federico C. Sayre, Esq. (SBN 067420)

sayreesq@sayrelevitt.com

Mahadhi Corzano, Esq. (SBN 254905)

mcorzano@sayrelevitt.com

333 Civic Center Drive West

Santa Ana, California 92701

Telephone: (714) 550-9117

Facsimile: (714) 716-8445

Attorneys for Plaintiff TRAVIS MOCK

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

TRAVIS MOCK,

Plaintiff,

vs.

CITY OF ANAHEIM; ANAHEIM
POLICE DEPARTMENT; OFFICER
TIM SCHMIDT; and DOES 1-50,
inclusive,

Defendants.

Case No: SA CV 12-829-BRO (Ex)

Assigned to: Hon. Beverly Reid
O'Connell

Dept: 14

**PLAINTIFF'S MEMORANDUM
OF CONTENTIONS OF FACT
AND LAW**

COME NOW Plaintiff, TRAVIS MOCK, pursuant to Local Rule 16-4,
submit the following Memorandum of Contentions of Fact and Law:

I. SUMMARY OF CLAIMS AND DEFENSES:

A. Plaintiff's Claims:

This case arises out of a police shooting incident that occurred on
February 17, 2011. Plaintiff alleges that Defendant, TIM SCHMIDT, used
excessive force when he shot Plaintiff on the back, while Plaintiff was unarmed.

On the morning of February 17, 2011, Plaintiff was dropped off to a residential area in Anaheim Hills. At approximately 5:20 a.m., Plaintiff began taking mail out of mailboxes on South Beckett Court. When Plaintiff reached the end of South Beckett Court, he turned left onto East Marblehead way and then turned left again onto Rexford Lane. Plaintiff walked up on Rexford Lane on the left-hand side of the sidewalk. Plaintiff took mail from 1086 S. Rexford Lane and continued walking towards the end of the cul-de-sac.

Once Plaintiff reached the end of the cul-de-sac, he checked the mailbox but found no mail. At that moment, Plaintiff heard a voice yelling "hey". As soon as he heard someone yell "hey", Plaintiff immediately ran in the middle of the street, exiting the cul-de-sac. While running away, Plaintiff was shot in the back by Defendant. No verbal warning was given by Defendant prior to shooting and at no time did Plaintiff turned towards Defendant's direction.

Defendant's conducts constitute violations of Fourth and Fourteenth Amended for use of excessive force and violation of due process. Also, Defendant's conducts constitute violations for Battery and Negligence.

B. Elements Required to Establish Plaintiff's Claims:

1. Section 1983 Violation of Civil Rights – Excessive Force and Due Process.

a. Schmidt acted under color of law; and
b. The act[s] of Schmidt deprived Mock of his particular rights under the United States Constitution.

2. Battery

a. Schmidt touched Mock with the intent to harm or offend him;

b. Mock did not consent to the touching; and

c. Mock was harmed by Tim Schmidt's conduct.

3. Negligence

1 a. Schmidt was negligent;
2 b. Mock was harmed; and
3 c. Schmidt's negligence was a substantial factor in causing
4 Mock's harm.

5 **C. Brief Description Of Evidence To Support Each Claim:**

6 1. Section 1983 Violation of Civil Rights – Excessive Force and
7 Due Process.

8 a. Schmidt was acting under the color of law: The Parties
9 have stipulated that Schmidt was acting under the color of law.

10 b. The act[s] of Schmidt deprived Mock of his particular
11 rights under the United States Constitution: Mock will rely on his testimony, the
12 testimony of Schmidt, and the testimony of Roger Clark that Schmidt's acts
13 deprived Mock of his particular rights under the United States Constitution.
14 Moreover, two (2) witnesses will testify to hearing that the reason why Schmidt
15 shot Mock was because he was burglarizing. Finally documentation gathered
16 during discovery will be introduced to show that Schmidt violated police policies
17 and procedures.

18 2. Battery

19 a. Schmidt touched Mock with the intent to harm or offend
20 him: Plaintiff will rely on his own testimony and Schmidt's testimony that
21 Schmidt intended to cause him harm.

22 b. Mock did not consent to the touching: Plaintiff will rely
23 on his own testimony and Schmidt's testimony that Mock did not consent to the
24 touching.

25 c. Mock was harmed by Tim Schmidt's conduct: Plaintiff
26 will rely on his own testimony, the testimony of Schmidt's and Mock's medical
27 records.

28 3. Negligence

1 a. Schmidt was negligent: Mock will rely on his testimony,
 2 the testimony of Schmidt, and the testimony of Roger Clark that Schmidt's acts
 3 were negligent. Moreover, two (2) witnesses will testify to hearing that the reason
 4 why Schmidt shot Mock was because he was burglarizing. Finally documentation
 5 gathered during discovery will be introduced to show that Schmidt was negligent.

6 b. Mock was harmed: Plaintiff will rely on his own
 7 testimony, the testimony of Schmidt's and Mock's medical records.

8 c. Schmidt's negligence was a substantial factor in causing
 9 Mock's harm: Plaintiff will rely on his own testimony, the testimony of Schmidt's
 10 and Mock's medical records.

11 **D. Summary Of Defendant's Affirmative Defenses:**

- 12 1. Comparative Fault
- 13 2. Self Defense
- 14 3. Failure to Mitigate Damages

15 **E. Elements To Establish Defendant's Affirmative Defenses:**

16 1. Comparative Fault.

- 17 a. That Travis Mock was negligent; and
- 18 b. That Travis Mock's negligence was a substantial factor in
 19 causing his harm.

20 2. Self-Defense

- 21 a. That Tim Schmidt reasonably believed that Travis Mock
 22 was going to harm him; and
- 23 b. That Tim Schmidt used only the amount of force that was
 24 reasonably necessary to protect himself.

25 3. Failure to Mitigate Damages.

- 26 a. That damages caused by a harm attributed to a defendant,
 27 if any, could have been avoided with reasonable efforts or expenditures by Travis
 28 Mock.

F. Brief Description Of Evidence Opposing Defendant's Affirmative Defenses:

1. Plaintiff's testimony that he was running away from Defendant immediately prior to being shot.

2. Plaintiff's testimony regarding the circumstances of events leading up to him being shot. Testimony of Roger Clark regarding Defendant did not act reasonably in using excessive force.

3. Plaintiff's testimony regarding his injuries and treatment. Testimony of Dr. Isaac Schmidt regarding Plaintiff's injuries, treatment and future medical treatment.

G. Similar Statements For All Third Parties:

1. None at this time.

H. Identification Of Any Anticipated Evidentiary Issue:

1. None at this time.

I. Identification Of Any Issues of Law:

1. None at this time.

II. BIFURCATION OF ISSUES

None.

III. JURY TRIAL

All parties have demanded a jury trial in a timely manner.

IV. ATTORNEY'S FEES

Plaintiff agrees to a reservation of the Court's jurisdiction for the purpose of determining after trial the amount of attorney's fees, if any, to be granted to the prevailing party, provided Plaintiff prevails.

///

///

///

///

1 **V. ABANDONMENT OF ISSUES:**

2 None.

3
4 DATED: September 3, 2013

SAYRE & LEVITT, LLP

5
6 By: /s/ Mahadhi Corzano

7 Federico Castelan Sayre

8 Mahadhi Corzano

9 Attorneys for Plaintiff

10 TRAVIS MOCK